

Commercial Contract

AGREEMENT FOR WEBSITE HOSTING



*Empowered lives.
Resilient nations.*



Small and Medium Enterprises Development Authority

Ministry of Industries & Production

Government of Pakistan

www.smeda.org.pk

HEAD OFFICE

4th Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road,
Lahore

Tel: (92 42) 111 111 456, Fax: (92 42) 36304926-7
helpdesk@smeda.org.pk

REGIONAL OFFICE PUNJAB	REGIONAL OFFICE SINDH	REGIONAL OFFICE KPK	REGIONAL OFFICE BALOCHISTAN
3 rd Floor, Building No. 3, Aiwan-e-Iqbal Complex, Egerton Road Lahore, Tel: (042) 111-111-456 Fax: (042) 36304926-7 helpdesk.punjab@smeda.org.pk	5 TH Floor, Bahria Complex II, M.T. Khan Road, Karachi. Tel: (021) 111-111-456 Fax: (021) 5610572 helpdesk-khi@smeda.org.pk	Ground Floor State Life Building The Mall, Peshawar. Tel: (091) 9213046-47 Fax: (091) 286908 helpdesk-pew@smeda.org.pk	Bungalow No. 15-A Chaman Housing Scheme Airport Road, Quetta. Tel: (081) 831623, 831702 Fax: (081) 831922 helpdesk-qta@smeda.org.pk

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Pro-Gole (Right to do Business)

Legal Services, B&SDS

LEGAL SERVICES, SMEDA

The Legal Services (LS) department is a part of Business & Sector Development Services Division of the Small Medium Enterprises Development Authority and plays a key role in providing an overall facilitation and support to the small businesses. The LS believes that information dissemination among the small businesses on the existing legal & regulatory environment and business to business and business to client contracting is of paramount importance and plays a pivotal role in their sustainable development.

In order to facilitate small businesses, the LS, under the Pro-GOLE (Right to do business) project, a joint SMEDA-UNDP initiative for supporting the small businesses, has developed user-friendly contract templates.

Pro-GOLE, (Right to do Business)

The UNDP has partnered with the Small and Medium Enterprises Development Authority to initiate and execute the Pillar 4 (Right to do business) component of the UNDP PRO-GOLE project which seeks to enhance the legal awareness and mobility of marginalized/ informal businesses. Under the project legal services outreach shall be extended to small businesses including home based enterprises, small shopkeepers, growers, women entrepreneurs, hawking vendors etc. In addition, small business shall be mobilized to access legal services.

The Need for Commercial Contracts Templates

In an increasingly complex and competitive industry, it is vital that suppliers and purchasers are fully protected against legal and commercial risks. To counter such risks, a viable solution; available as- of the shelf commercial contract templates- will provide the users with first class ready to use support. With obligations properly set out and liabilities accurately defined, the users will be in a far better position to look after their rights and interests and move forward from their marginalized positions to being active players of the economy. The Legal Service Providers can equally take benefit of these templates for their professional and business development.

Disclaimer

The information contained in this template is meant to facilitate the businesses in documenting transactions with reference to internet and technology. However, SMEDA, UNDP or any of their employees or representatives accept no responsibility and expressly disclaim any and all liabilities for any and all losses/shortfalls caused by or motivated by recommendations from the information contained within this document. Although SMEDA's ambition is to provide accurate and reliable information; yet, the document is not an alternative to expert legal advice and should ideally be used in conjunction with the same. Any person using this document and or benefiting from the information contained herein shall do so at his/her own risk and costs and be deemed to have accepted this disclaimer.

All information contained in this document may be freely used provided that relevant acknowledgement is accurately quoted with each usage.

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14. AGREEMENT FOR WEBSITE HOSTING

THIS **AGREEMENT FOR WEBSITE HOSTING** (hereinafter referred to as the "Agreement") is made at [insert place] on this ____ (insert date) day of _____ (insert month), 20__ (insert year)

BY AND BETWEEN:

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

(hereinafter referred to as the "Provider", which expression shall, wherever the context so provides, include its assigns, nominees, agents and successors-in-interest)

AND

M/s [insert Name], a public/private company incorporated under the Companies Ordinance, 1984, having its registered office at [insert Address] through its [insert Designation], Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a partnership concern of Mr/Mrs/Ms [insert Name] and Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through its Partner, Mr/Mrs/Ms [insert Name];

OR

M/s [insert Name], a sole proprietorship concern of Mr/Mrs/Ms [insert Name], having its place of business at [insert Address] through Mr/Mrs/Ms [insert Name];

(hereinafter referred to as the "Customer", which expression shall, wherever the context so provides, include its agents and successors-in-interest).

(The Provider and the Customer are hereinafter collectively referred to as the "Parties" and individually as the "Party".)

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WHEREAS the Provider is engaged in providing website hosting services to its clients.

AND WHEREAS the Customer is the owner of the domain name "[insert domain name]" (hereinafter referred to as the "Domain Name"), and requires the services of a web host.

AND WHEREAS the Customer wishes to retain the Provider for the website hosting services for its Domain Name.

AND WHEREAS the Provider accepts to provide the Services to the Customer upon the terms and conditions of this Agreement.

NOW THEREFORE the Parties have entered into this Agreement on the following terms and conditions:

1. TERM

This Agreement shall come into effect on the date of execution of this Agreement, and shall continue until terminated by any Party under the terms and conditions of this Agreement.

2. SERVICES

(1) The Parties acknowledge and agree that under the terms and conditions of this Agreement, the Provider shall be responsible for providing Website Hosting Services to the Customer.

(2) The Parties further agree and acknowledge that the Provider is not responsible for the Customer's site maintenance, changes, modifications, HTML coding, scripting, or programming, now or in the future.

3. PAYMENT FOR SERVICES

(1) In consideration of the Provider providing the Services to the Customer, the Customer shall pay to the Provider Rs. _____/- (Rupees _____) (insert amount) per month (hereinafter referred to as the "Service Fees").

(2) The Customer shall also pay one-time non refundable setup fee of Rs. _____/- (Rupees _____) (insert amount) to the Provider, as well as a prorated partial monthly charge for the number of days remaining in the calendar month from the time of initiation of Service until the end of the month in which the Service is initiated.

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- (3) On or about the first day of every month thereafter, the Customer will be invoiced for the monthly payment for the Services according to Clause _____, which payments shall be made within [insert number] of the receipt of the respective invoices.
- (4) The Service Fees shall be subject to change at the sole option of the Provider.
- (5) If this Agreement is terminated on some day other than the last day of the month, the Customer will be obligated to pay for only the pro rata portion of the monthly Service plan charge for the month in which the Service is terminated. The Provider shall provide detailed invoices and shall maintain, and provide, upon request, back-up documentation for a period of one year from the date of the respective invoices.

4. LATE PAYMENT

- (1) The Customer shall make full payment for the Services within [insert number] days of the invoice.
- (2) In case of late payment, the Customer shall pay an additional amount at Rs. _____/- (Rupees _____) (insert amount) to the Provider for each day that the payment is over due.
- (3) At [insert number] days past the due date of the payment, the Provider shall be at liberty to lock the Customer's account, which shall only be unlocked upon the receipt by the Provider of all payments due from the Customer.

5. TERMINATION

- (1) Either Party to this Agreement may terminate this Agreement, with or without cause, by providing at least [insert number] days' written notice to the other Party.
- (2) If either party is in default under this Agreement, including the Customer's default in making timely payments, the non defaulting Party may, but without the obligation to do so, immediately terminate the Agreement without prior notice to the other Party.

6. PROHIBITION OF PUBLICATION OF CERTAIN MATERIAL

- (1) The Customer shall not, knowingly or unknowingly, submit to the Provider for publication any of the following material (including pictures, links, or any other content):
 - i. any material which violates or infringes any copyright, trademark, trade secret, patent, statutory, common law or other proprietary right of any third party;
 - ii. any material that is libelous or slanderous;

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- iii.any material which is or contains anything obscene or pornographic; or
 - iv.distribution lists to be used via unsolicited electronic mail or other mass electronic mailings.
- (2)Due to the public nature of the Internet, all materials submitted by the Customer for publication will be considered publicly accessible. The Provider does not screen in advance any material submitted to the Provider for publication. The Provider's publication of material submitted by a customer does not create any express or implied approval by the Provider to publish such material, nor does it indicate that such material complies with the terms of this Agreement.

7. LIMITATION/DISCLAIMER OF LIABILITY

- (1)The Provider is not liable for protection or privacy of electronic mail or other information transferred through the Internet or any other network provider.
- (2)The Provider does not represent or warrant to the Customer that the Customer will receive continual and uninterrupted service during the term of this Agreement.

8. INDEMNITY

The Customer agrees to defend, indemnify and hold the Provider harmless from and against any and all claims, losses, liabilities and expenses (including attorneys' fees) related to or arising out of the Services provided by the Provider to the Customer under this Agreement, including without limitation claims made by third parties (including clients of the Customer) related to any false advertising claims, liability claims for products or services sold by Customer, claims for patent, copyright or trade mark infringement, claims due to disruption or malfunction of Services provided hereunder, or for any content submitted by the Customer for publication to the Provider, but excluding those claims which arise due to the negligence of the Provider.

9. IP ADDRESSES

The Provider maintains, controls and own any and all IP numbers and addresses that may be assigned to the Customer pursuant to this Agreement, and reserves, in its sole discretion, the right to change or remove any and all IP numbers and addresses.

10. FILE BACK-UP

The Provider is not responsible for the Customer's files residing on the Provider's servers, and it is the sole responsibility of the Customer to

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maintain an independent back-up of the data stored on the Provider's servers.

11. GOVERNING LAW AND EXCLUSIVE JURISDICTION

This Agreement in all respects be read and construed and shall operate as a contract, in conformity with the laws of [insert place] and the courts at [insert place] shall have exclusive jurisdiction for adjudicating any dispute arising hereunder.

12. RESOLUTION OF DISPUTES

Any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the Pakistan Arbitration Act, 1940, subject to the exclusive jurisdiction of the Courts of [insert place].

13. FORCE MAJEURE

- (1) Force Majeure shall mean any event that is beyond the reasonable control of a Party, or the effects of which adversely affect the performance by such Party of its obligations under this Agreement, including, but not limited to, acts of God, sabotage, insurrection, terrorism, riots, hostilities or war (whether declared or not), acts of the public enemy, civil disturbances, any kind of fire, explosion, flood or accidental damage, epidemics, landslides, washouts, lightening, storms, earthquakes, lockouts, blockades, shortage of labor or material, major equipment failure, or other causes beyond the control of the Party affected.
- (2) Notwithstanding anything contained hereinabove, neither Party shall be liable to the other if it is unable to perform any of its obligations under this Agreement due to the occurrence of Force Majeure.
- (3) The Party affected by the Force Majeure event shall be entitled to suspend performance of its obligations under the Agreement to the extent that such performance is impeded or made impossible by the events of Force Majeure.
- (4) Each Party shall give a notice within [insert number] days of the occurrence of the event of Force Majeure and shall promptly thereafter consult the other Party for the purpose of finding a mutually acceptable solution to the Force Majeure event.

14. AMENDMENTS

This Agreement may be modified, extended, enlarged or amended from time to time by mutual agreement and consent of the Parties.

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15. NONWAIVER

The failure of either Party to exercise any right provided in this Agreement shall not be construed as a waiver its right to subsequently enforce such provision or any other provision of this Agreement.

16. NON-ASSIGNMENT

In no circumstances whatsoever can a Party assign the benefit of this Agreement to any third person or delegate to a third person its duties to be performed under this Agreement.

17. PARTIAL INVALIDITY

If any provision of this Agreement is held by a Court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions shall nevertheless continue in full force and effect without being impaired or invalidated in any way. This Agreement shall not be terminated by the merger or consolidation of the Customer into or with any other entity.

IN WITNESS WHEREOF, the Parties have set their respective hands on this Agreement at the place, and on the date, mentioned hereinabove.

For and on behalf of
The Provider

For and on behalf of
The Customer

WITNESS NO. 1

Signature: _____

Name: _____

Designation: _____

Date: _____

WITNESS NO. 2

Signature: _____

Name: _____

Designation: _____

Date: _____